



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

April 3, 2003

IN REPLY PLEASE

REFER TO FILE: PD-2

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**SMITHWAY STREET FROM FLOTILLA STREET TO
650 FEET WEST OF LEO AVENUE
CITY OF COMMERCE-COUNTY COOPERATIVE AGREEMENT
SUPERVISORIAL DISTRICT 1
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Consider the Notice of Exemption for the Smithway Street Reconstruction and Widening project prepared by the City of Commerce and filed with the County Clerk on March 25, 2003, find that the Notice of Exemption describes the Smithway Street from Flotilla Street to 650 feet west of Leo Avenue project as represented in the enclosed cooperative agreement with the City, concur that the project is exempt from the California Environmental Quality Act, and find that these actions reflect the independent judgment of the County.
2. Approve and instruct the Chair of the Board to sign the cooperative agreement with the City for the project. The agreement provides for the County to perform the preliminary engineering and administer the construction of the project with the City to finance the entire project cost. The total project cost is currently estimated to be \$1,363,000.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The City of Commerce proposes to widen and reconstruct the deteriorated roadway pavement on Smithway Street from Flotilla Street to 650 feet west of Leo Avenue, which is entirely within the City of Commerce. The work also includes the construction of curb,

gutter, and sidewalk; the construction of a drainage system; and the replacement or reconstruction of the existing street lighting system. Your Board's approval of the enclosed agreement is necessary for the delegation of responsibilities and the cooperative financing of the project. Sections 1685 and 1803 of the California Streets and Highways Code provide that the board of supervisors of any county may enter into contracts or agreements with the legislative body of any city for the purposes of more efficient construction or repair of streets and roads within the city.

Implementation of Strategic Plan Goals

This action meets the County's Strategic Plan Goal of Service Excellence. By improving the subject roadway, residents of the City and nearby unincorporated areas who travel on this street will benefit from the enhanced safety of the roadway, which will improve their quality of life. It also satisfies the goal of Organizational Effectiveness by utilizing a collaborative effort to expedite completion of the project.

FISCAL IMPACT/FINANCING

The total project cost, currently estimated to be \$1,363,000, will be financed by the City.

Funding for this project is included in the Fiscal Year 2002-03 Road Fund Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The enclosed agreement, which has been approved as to form by County Counsel, provides for the County to perform the preliminary engineering and administer the construction of the project.

ENVIRONMENTAL DOCUMENTATION

The Smithway Street Reconstruction and Widening project's Notice of Exemption was adopted by the City of Commerce and filed with the County Clerk on March 25, 2003. The recommended findings are in accordance with the California Environmental Quality Act and are required prior to your Board's approval of this cooperative agreement.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed improvements are needed and of general County interest.

The Honorable Board of Supervisors
April 3, 2003
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CONCLUSION

Enclosed are two copies of the agreement, which have been approved by the City and approved as to form by County Counsel. Upon your approval, please return the copy marked "CITY ORIGINAL" to us for processing together with one approved copy of this letter. The copy marked "COUNTY ORIGINAL" is for your files.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

MER:cr
C031620
A:\Smithway St.dot

Enc.

cc: Chief Administrative Office
County Counsel

A G R E E M E N T

THIS AGREEMENT, made and entered into by and between the CITY OF COMMERCE, a municipal corporation in the County of Los Angeles, hereinafter referred to as "CITY," and the COUNTY OF LOS ANGELES, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

W I T N E S S E T H

WHEREAS, CITY and COUNTY propose to widen and reconstruct the deteriorated roadway pavement on Smithway Street from Flotilla Street to 650 feet west of Leo Avenue, including the reconstruction of curb, gutter, and sidewalk, the construction of a drainage system, and the replacement or reconstruction of the existing street lighting system, which work is hereinafter referred to as "PROJECT"; and

WHEREAS, PROJECT is entirely within the geographical boundary of CITY; and

WHEREAS, PROJECT is of general interest to CITY and COUNTY; and

WHEREAS, CITY is willing to be responsible for right-of-way acquisition and clearance matters for property affected by PROJECT at the CITY'S expense; and

WHEREAS, COUNTY is willing to perform or cause to perform the preliminary engineering for PROJECT, which work is hereinafter referred to as "DESIGN"; and

WHEREAS, COUNTY is also willing to perform the contract administration, construction inspection and engineering, materials testing, and construction survey for PROJECT, which work is hereinafter referred to as "CONSTRUCTION "; and

WHEREAS, "COST OF PROJECT" includes, but is not limited to, the costs of preliminary engineering, construction contract, contract administration, construction inspection and engineering, materials testing, construction survey, signing, and striping for PROJECT, as more fully set forth herein; and

WHEREAS, "COST OF DESIGN" includes, but is not limited to, the costs of preliminary engineering for PROJECT, as more fully set forth herein, currently estimated to be One Hundred Fifty-nine Thousand and 00/100 Dollars (\$159,000.00); and

WHEREAS, "COST OF CONSTRUCTION" includes, but is not limited to, the costs of contract administration, construction contract, construction inspection and engineering, materials testing, construction survey, utility relocation, signing, and striping for PROJECT, as more fully set forth herein, currently estimated to be One Million Two Hundred Four Thousand and 00/100 Dollars (\$1,204,000.00); and

WHEREAS, CITY is willing to finance the entire COST OF DESIGN and COST OF CONSTRUCTION, collectively herein referred to as COST OF PROJECT; and

WHEREAS, COST OF PROJECT is currently estimated to be One Million Three Hundred Sixty-three Thousand and 00/100 Dollars (\$1,363,000.00).

NOW, THEREFORE, in consideration of the mutual benefits to be derived by CITY and COUNTY and of the promises herein contained, it is hereby agreed as follows:

(1) DEFINITIONS:

- a. The term "JURISDICTION" as referred to in this AGREEMENT shall be defined as the area within the geographical boundary of governmental entity mentioned in this AGREEMENT.
- b. "COST OF PROJECT," as referred to in this AGREEMENT, shall consist of the sum total of COST OF DESIGN and COST OF CONSTRUCTION and shall consist of the costs of preliminary engineering, construction contract, contract administration, construction engineering and inspection, materials testing, construction survey, utility relocation, traffic detour, final signing and striping, and all other work necessary to construct PROJECT in accordance with the approved plans and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items. The COST OF PROJECT shall not include the cost of right-of-way acquisition and clearance matters.
- c. The cost of "right-of-way acquisition and clearance matters," as referred to in this AGREEMENT, shall consist of the costs of investigating and preparing search maps for right-of-way identification; property appraisals; title reports; preparation of legal descriptions; acquiring any parcels of land and easements, including negotiations, condemnation activities, and escrow costs; clearing any improvements within right of way; obtaining permits to enter other property; incidental and litigation; expenses and all other work necessary to acquire right of way; and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.
- d. The COST OF DESIGN, as referred to in this AGREEMENT, shall include all costs associated with DESIGN and shall consist of the costs of preliminary engineering, and all other work necessary to construct

PROJECT in accordance with the approved plans and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.

- e. The cost of "preliminary engineering," as referred to in this AGREEMENT, shall consist of the costs of environmental documentation; design survey; soils report; traffic index and geometric investigation; preparation of plans, specifications, and cost estimates; right-of-way certification; utility engineering; and all other necessary work prior to advertising of PROJECT for construction bids and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any and all of the aforementioned items.
- f. "COST OF CONSTRUCTION," as referred to in this AGREEMENT, shall consist of the total of construction contract, contract administration, construction engineering and inspection, materials testing, construction survey, utility relocation, traffic detour, final signing and striping, and all other work necessary to construct PROJECT in accordance with the approved plans and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.
- g. The cost of the "construction contract," as referred to in this AGREEMENT, shall consist of the total of payments to the construction contractor for PROJECT and payments to utility companies or contractors for the relocation of facilities necessary for the construction of PROJECT.

(2) CITY AGREES:

- a. To be responsible for all right-of-way acquisition and clearance matters for property affected by PROJECT at CITY expense.
- b. To finance the entire COST OF PROJECT, the amount of which is to be determined by a final accounting of COST OF PROJECT.

- c. To deposit with COUNTY, upon execution of this AGREEMENT and upon demand by COUNTY, sufficient CITY funds to finance the entire COST OF DESIGN, currently estimated to be One Hundred Fifty-nine Thousand and 00/100 Dollars (\$159,000.00). Said demand will consist of a billing invoice prepared by COUNTY.
- d. To deposit with COUNTY, following the opening of construction bids for PROJECT and upon demand by COUNTY, sufficient CITY funds to finance the entire COST OF CONSTRUCTION, currently estimated to be One Million Two Hundred Four Thousand and 00/100 Dollars (\$1,204,000.00). Said demand will consist of a billing invoice prepared by COUNTY.
- e. To obtain, if necessary, and grant COUNTY any temporary right of way within CITY necessary for the construction of PROJECT at no cost to COUNTY.
- f. Upon approval of construction plans for PROJECT, to issue COUNTY a no-fee permit(s) authorizing COUNTY to construct those portions of PROJECT within CITY highway right of way.
- g. To appoint COUNTY as CITY'S attorney-in-fact for the purpose of representing CITY in all negotiations pertaining to the advertisement of PROJECT for construction bids, award, and administration of the construction contract, and in all things necessary and proper to complete PROJECT.
- h. To cooperate with COUNTY in conducting negotiations with and, where appropriate, issue notices to public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction. Where utilities have been installed in CITY streets or on CITY property, CITY will provide the necessary right of way for the relocation of those utilities and facilities that interfere with the construction of PROJECT. CITY will take all necessary steps to grant, transfer, or assign all prior rights over utility companies and owners of substructure and overhead facilities when necessary to construct, complete, and maintain PROJECT or to appoint COUNTY as its attorney-in-fact to exercise such prior rights.

- i. Upon completion of PROJECT, to maintain in good condition and at CITY expense all improvements constructed as part of PROJECT within CITY'S JURISDICTION.

(3) COUNTY AGREES:

- a. To perform the preliminary engineering, construction inspection and engineering, materials testing, construction survey, and contract administration for PROJECT.
- b. To obtain CITY'S approval of plans for PROJECT prior to advertising for construction bids.
- c. To advertise PROJECT for construction bids, to award and to administer the construction contract, and to act on behalf of CITY in all negotiations pertaining thereto.
- d. To furnish CITY, within one hundred twenty (120) calendar days after final payment to the construction contractor for PROJECT, a final accounting of the actual total COST OF PROJECT, including an itemization of actual unit costs and actual quantities for PROJECT.

(4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. That if COST OF PROJECT, based upon the final accounting, exceeds CITY'S payments, as set forth in paragraphs (2) b. and c., above, CITY shall pay to COUNTY the additional amount upon demand. Said demand will consist of a billing invoice prepared by COUNTY. Conversely, if the required CITY funds are less than said deposits, COUNTY shall refund the difference to CITY.
- b. That if CITY'S payments, as set forth in paragraph (2) b. and c., above, are not delivered to COUNTY office, which are described on the billing invoices prepared by COUNTY prior to award of PROJECT, COUNTY may delay the award of PROJECT, pending the receipt of CITY'S payments.
- c. That if CITY'S final payment, as set forth in paragraph (4) a., above, is not delivered to COUNTY office, which is described on the billing invoice prepared by COUNTY within thirty (30) calendar days after the date of said invoice, notwithstanding the provisions of Government Code, Section 907, COUNTY may satisfy such indebtedness, including interest thereon, from any funds of CITY on deposit with COUNTY, after giving notice to CITY of COUNTY'S intention to do so.

- d. CITY shall review the final accounting invoice prepared by COUNTY and report in writing any discrepancies to COUNTY Department of Public Works within thirty (30) calendar days after the date of said invoice. Undisputed charges shall be paid by CITY to COUNTY within thirty (30) calendar days after the date of said invoice. Department of Public Works shall review all disputed charges and submit a written justification detailing the basis for those charges within thirty (30) calendar days of receipt of CITY'S written report. CITY shall then make payment of the previously disputed charges or submit justification for nonpayment within thirty (30) calendar days after the date of COUNTY'S written justification.
- e. COUNTY, at any time, may, at its sole discretion, designate an alternative payment mailing address and an alternative schedule for payment of CITY funds, if applicable. CITY shall be notified of such changes by invoice.
- f. During construction of PROJECT, COUNTY shall furnish an inspector or other representative to perform the functions of an inspector. CITY may also furnish, at no cost to COUNTY, an inspector or other representative to inspect construction of PROJECT. Said inspectors shall cooperate and consult each other, but the orders of the COUNTY inspector to the contractor or any other person in charge of construction shall prevail and be final.
- g. This AGREEMENT may be amended or modified only by mutual written consent of COUNTY and CITY.
- h. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

CITY:

Mr. Tom Sykes
City Administrator
City of Commerce
2535 Commerce Way
Commerce, CA 90040-1487

COUNTY:

Mr. James A. Noyes
Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

- i. Neither COUNTY nor any officer or employee of COUNTY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, CITY shall fully indemnify, defend, and hold COUNTY harmless from any liability imposed for injury (as defined by Government Code, Section 810.8) or damage occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this AGREEMENT.
- j. Neither CITY nor any officer or employee of CITY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, COUNTY shall fully indemnify, defend, and hold CITY harmless from any liability imposed for injury (as defined by Government Code, Section 810.8) or damage occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this AGREEMENT.
- k. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this AGREEMENT to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each of the parties indemnifies and holds harmless the other party for any liability, cost, or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.
- l. It is understood and agreed that the provisions of Assumption of Liability Agreement No. 32374, between CITY and COUNTY, adopted by the Board of Supervisors on December 27, 1977, and currently in effect, are inapplicable to this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized, by the CITY OF COMMERCE on _____, 2003, and by the COUNTY OF LOS ANGELES on _____, 2003.

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By _____
Deputy

CITY OF COMMERCE

By _____
Mayor

ATTEST:

APPROVED AS TO FORM:

By _____
City Clerk

By _____
City Attorney